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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,121	02/06/2004	Athena Christodoulou	300201983-2	8386

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER
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KEEFER, MICHAEL E

ART UNIT	PAPER NUMBER
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2154

MAIL DATE	DELIVERY MODE
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08/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/774,121

Applicant(s)

CHRISTODOULOU ET AL.

Examiner

Michael E. Keefer

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-17, 19-21 and 24-31 is/are rejected.
- 7) ☒ Claim(s) 6-10, 18, 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/6/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This Office Action is responsive to the Application filed 2/6/2004.

#### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Objections***

3. Claims 6-10, 18, and 22-23 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim because they depend from other multiple dependent claims. See MPEP § 608.01(n). Accordingly, the claims 6-10, 18, and 22-23 not been further treated on the merits.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 27-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

#### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 19-21 and 30-31** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claims 19-20 and 30** claim a "software agent", **Claims 20 and 31** claim a "computer program". A software agent and computer programs are merely functional descriptive material. This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes functional descriptive material. Functional descriptive material does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

**Claims 22-26** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding **claims 22-26**, the "machine readable medium," in accordance with Applicant's specification, may be a transmitted signal (i.e. carrier waves). This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a

manufacture, and not a composition of two or more substances to constitute a composition of matter.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 11-17, 19-21, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Oren et al. (WO 02/076003), hereafter Oren.

Regarding claim 1, Oren discloses:

A method of providing a node of a peer-to-peer network with access to a resource located within the network comprising:

providing the node with at least one link to the resource which is actuable to connect the node to the resource and the link having associated therewith information which provides an action that the node using the link to access the resource should perform if access to the resource should fail. (Page 14, lines 11-25. A list of sources of a file are sent to the client device. The actions associated with the list include performance optimization information as disclosed in lines 11-12.)

Regarding **claim 2 as applied to claim 1**, Oren discloses:

in which the information provides at least one link to an alternative resource which is actuable to connect the node to that alternative resource.

(Page 14, lines 11-25. A list of sources of a file are sent to the client device. The actions associated with the list include performance optimization information as disclosed in lines 11-12 of page 14.)

Regarding **claim 3 as applied to claims 1 and/or 2**, Oren discloses:

in which the information associated with the at least one link determines what defines failure of the attempted access to the resource. (Failure conditions are determined in lines 15-19 and lines 20-22 of page 14)

Regarding **claim 4 as applied to claims 1 and 3 or 1, 2, and 3**, Oren discloses:

in which failure of the attempted access has at least one of the following definitions: failure to access the resource within a predetermined time; access to the resource has a lower performance than a predetermined performance measure. (Failure conditions are determined in lines 15-19 and lines 20-22 of page 14)

Regarding **claim 5 as applied to claims 1, 3 and 4 or 1-4**, Oren discloses:

in which the predetermined performance measure comprises a data transfer rate of the resource to the node below a predetermined threshold. (this failure condition is determined in lines 15-19 of page 14)

Regarding **claims 11 and 24**, Oren discloses:

The subject matter of this claim is substantially the same as claim 1, therefore this claim is rejected for similar reasoning to claim 1 above.

Regarding **claims 12 and 24 as applied to claim 11**, Oren discloses:

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that is arranged to determine that access to the resource has failed if access does not occur within a predetermined time. (Page 14, lines 20-23 disclose the action being that a link has broken.)

**Regarding claims 13 and 24 as applied to claims 11-12,** Oren discloses

arranged to determine that access to the resource has failed if the access has a lower performance than a predetermined performance measure. (Page 14 lines 14-19 disclose monitoring and changing servers if a server falls below a desired performance measure.)

**Regarding claim 14,** Oren discloses:

The subject matter of this claim is substantially the same as claim 1, therefore this claim is rejected for similar reasoning to claim 1 above.

**Regarding claim 15 as applied to claim 14,** Oren discloses:

in which the resource comprises at least one of the following: a file, a program, processor cycles of a processor, storage capacity. (The resource in Oren is at least a file. See Abstract)

**Regarding claim 16 as applied to claims 14 or 14-15,** Oren discloses:

in which one or more nodes are arranged to send information associated with a link that provides a plurality of alternative actions should access to a resource fail. (Page 14, lines 12-25, the node is arranged to send a list of alternative hosts to which the client can switch to in order to continue downloading should a resource fail. (I.e. Connect to site A, Connect to site B are a plurality of alternative actions))

Regarding **claim 17 as applied to claims 14 and 16 or 14-16**, Oren discloses:

in which one or more nodes are arranged to send information associated with a link that causes the node receiving the information to access an alternative resource should access to a resource fail. (Page 14, lines 12-25, the node is arranged to send a list of alternative hosts to which the client can switch to in order to continue downloading should a resource fail. (I.e. Connect to site A, Connect to site B are a plurality of alternative actions))

Regarding **claims 19, 20, 21, 25, and 26**, Oren discloses:

The subject matter of claims 19-20 and 25 are substantially the same as that of claim 1, with the exception of the specification of an embodiment as software. Page 4 lines 4-7 discloses the use of software. Therefore they are rejected for similar reasons to claim 1.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael E. Keefer whose telephone number is (571) 270-1591. The examiner can normally be reached on Monday through Friday 5:30am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 8/1/2007



**NATHAN FLYNN**  
**SUPERVISORY PATENT EXAMINER**